

In the Matter of Merchant Mariner's Document No. Z-366142-D2
Issued to JOHN MORLEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOHN MORLEY

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 27 October, 1949, an Examiner of the United States Coast Guard at Philadelphia, Pa., suspended Merchant Mariner's Document No. Z-366142-D2 issued to John Morley, upon finding him guilty of "misconduct" based upon two specifications; the first specification alleging in substance, that while acting as a wiper in the service of the American S.S. GULFTRADE, under authority of the document above described, on or about 22 September, 1949, he deserted said vessel at Puerto La Cruz, Venezuela; and the second specification alleging that, while serving as above and on the same date, Appellant failed to join said vessel.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer introduced in evidence five documentary exhibits after having completed his opening statement.

In defense, Appellant testified in his own behalf stating that he was guilty only of the charge of failure to join since he missed the ship by 45 minutes.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of specifications No. 1 and 2 and entered an order suspending Appellant's Merchant Mariner's Document and all other valid licenses (or certificates of service) held by him for a period of six months, three months outright suspension and three months suspension on nine months' probation from 27 January, 1950.

From that order, this appeal has been taken, and it is urged that Appellant missed the ship through no fault of his own. He states that he lost his pass and could not convince the guards that he was an American seaman. He also contends that he left clothing in the engine room to dry; that he requested repatriation and the delay was not caused by himself; and that his testimony was vague and unconvincing because he had no counsel and was testifying before two experienced officers. Appellant requests that the suspension be made wholly probationary.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 21 and 22 September, 1949 Appellant was in the service of the American S. S. GULFTRADE, acting under authority of his Merchant Mariner's Document No. Z-366142-D-2 as a fireman, while the ship was at Puerto La Cruz, Venezuela.

On 21 September, 1949, Appellant went ashore at 2200 to visit a girl friend of his. He knew that the ship was scheduled to sail at 0800 the next morning but he was not on board when the ship got underway. Appellant had taken all of his personal effects ashore with him.

Appellant reported to the Gulf Oil Company office some time after the ship had sailed. He was taken to a hotel and did not appear again until the first week of October to request repatriation. On 13 October, 1949, he was signed on the GULFMEADOWS as a workaway and arrived at Philadelphia on 19 October, 1949.

OPINION

Desertion is considered to be "misconduct" within the meaning of Title 46 United States Code 239 because the manning of American merchant marine ships is primarily based upon the agreement contained in the ship's articles. If a seaman abandons a voyage which he has engaged to complete, he thereby breaches his contract with the ship's Master. The seriousness of this offense arises from the fact that possible danger may result to the remainder of the crew, the ship and its cargo while the ship is undermanned. Due to the comparable difficulty of obtaining replacements in foreign ports, the seriousness of the offense is enhanced when committed under such circumstances.

Appellant's testimony can be given little or no credence because of its incoherent and contradictory nature. To prove desertion, it must be shown that there was an intent to abandon the voyage. Such intent being a state of mind, it is not subject to direct proof but is a presumption of fact to be inferred from other facts. As stated in the opinion of the Examiner, the fact that all Appellant's personal effects had been removed from the GULFTRADE coupled with the fact that he made no attempt to leave Venezuela for approximately three weeks, are adequate evidence to establish Appellant's intent to desert the GULFTRADE and abandon the voyage.

CONCLUSION AND ORDER

The order of the Examiner dated 27 October, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of January, 1950.